

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FANTASIA DAWSON,

Plaintiff,

v.

THE KROGER CO.,
1160 MORELAND AVE SE, LLC,
JOHN DOE A-B, and
ABC CORPORATIONS 1-5,

Defendants.

Civil Action File No.

Removed from DeKalb County State
Court, Civil Action No. 23A02972

JURY TRIAL DEMANDED

**DEFENDANT THE KROGER CO.’S ANSWER AND
DEFENSES TO PLAINTIFF’S COMPLAINT**

COMES NOW The Kroger Co., named as a defendant in the *Complaint* of Plaintiff Fantasia Dawson (hereinafter referred to as “Plaintiff”) by and through undersigned counsel, and files this, its *Answer and Defenses* thereto, further showing this honorable Court as follows:

FIRST DEFENSE

For a first defense, Defendant The Kroger Co. (“Defendant” or “Kroger”) responds to the enumerated paragraphs of the *Complaint* as follows:

PRELIMINARY STATEMENT

1.

Defendant denies the averments alleged in Paragraph 1 of Plaintiff's *Complaint* and demands strict proof thereof.

PARTIES, JURISDICTION, AND VENUE

2.

Upon information and belief, admitted that Plaintiff is a resident of the State of Georgia.

3.

Admitted.

4.

Admitted.

5.

Admitted.

6.

Defendant is without knowledge or information sufficient to either admit or deny the averments alleged in this paragraph.

7.

Defendant is without knowledge or information sufficient to either admit or deny the averments alleged in this paragraph.

8.

Defendant is without knowledge or information sufficient to either admit or deny the averments alleged in this paragraph.

9.

Denied.

10.

Denied.

11.

Denied.

12.

Denied.

13.

Denied.

14.

Denied.

15.

Denied.

16.

The averments alleged in this paragraph of the *Complaint* are denied as written.

17.

Defendant admits that venue is proper in this Court as well as in the State Court of DeKalb County.

18.

Defendant The Kroger Co. admits it operates Kroger grocery Store No. 488 located at 1160 Moreland Ave SE, Atlanta, Georgia 30316 as a lease tenant, presently and as of November 28, 2021. To the extent not expressly admitted, the averments in this paragraph are denied.

FACTS AND ALLEGATIONS OF LIABILITY

19.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant restates and incorporates its responses to the foregoing paragraphs as if fully stated herein.

20.

Defendant is without knowledge or information sufficient to either admit or deny the averments alleged in this paragraph; said averments therefore stand as denied by operation of law.

21.

Defendant The Kroger Co. admits it operates Kroger grocery Store No. 488 located at 1160 Moreland Ave SE, Atlanta, Georgia 30316 as a lease tenant, presently and as of November 28, 2021. To the extent not expressly admitted, the averments in this paragraph are denied.

22.

Denied.

23.

Denied.

24.

Denied.

25.

Denied.

COUNT I

ALLEGED NEGLIGENT MAINTENANCE OF PREMISES AS TO ALL
DEFENDANTS

26.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant restates and incorporates its responses to the foregoing paragraphs as if fully stated herein.

27.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant admits that it owed certain applicable legal duties to invitees at material times, as its invitees likewise have certain applicable legal duties. Otherwise, the averments alleged in this paragraph are denied.

28.

Denied.

29.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant admits that it owed certain applicable legal duties to invitees at material times, as its invitees likewise have certain applicable legal duties. Otherwise, the averments alleged in this paragraph are denied.

30.

Denied.

31.

Denied.

COUNT II

ALLEGED NEGLIGENT FAILURE TO WARN AS TO THE KROGER CO.

32.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant restates and incorporates its responses to the foregoing paragraphs as if fully stated herein.

33.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant admits that it owed certain applicable legal duties to invitees at material times, as its invitees likewise have certain applicable legal duties. Otherwise, the averments alleged in this paragraph are denied.

34.

The averments alleged in this paragraph of Plaintiff's *Complaint*, including all subparts, are denied.

35.

Denied.

36.

Denied.

37.

Denied.

COUNT III

ALLEGED VICARIOUS LIABILITY AS TO THE KROGER CO.

38.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant restates and incorporates its responses to the foregoing paragraphs as if fully stated herein.

39.

The averments alleged in this paragraph of Plaintiff's *Complaint* are denied as written.

40.

The averments alleged in this paragraph of Plaintiff's *Complaint* are denied as written.

COUNT IV

ALLEGED NEGLIGENT TRAINING AND SUPERVISION AS TO THE
KROGER CO.

41.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant restates and incorporates its responses to the foregoing paragraphs as if fully stated herein.

42.

Denied.

43.

Denied.

44.

Denied.

45.

Denied.

46.

Denied.

DAMAGES

47.

In response to the averments alleged in this paragraph of Plaintiff's *Complaint*, Defendant restates and incorporates its responses to the foregoing paragraphs as if fully stated herein.

48.

Denied.

49.

Denied.

50.

Denied.

51.

Denied.

52.

Denied.

53.

Denied.

54.

For a response to any averments alleged in the “WHEREFORE” paragraph following Paragraph 53 of Plaintiff’s *Complaint*, Defendant denies same and demands strict proof thereof.

55.

Any averment alleged in Plaintiff’s *Complaint* which has not been expressly admitted in this Answer is hereby denied, and strict proof of every said averment is hereby demanded.

SECOND DEFENSE

Plaintiff’s *Complaint* fails to state a claim upon which relief can be granted, in whole or in part.

THIRD DEFENSE

No action or omission on the part of Defendant proximately caused the accident at issue or the alleged injuries and damages of Plaintiff, and therefore Plaintiff cannot recover from Defendant.

FOURTH DEFENSE

Defendant breached no legal duty owing Plaintiff, and therefore Plaintiff cannot recover from Defendant. At all times, Defendant exercised that degree of

care required by law; therefore, Plaintiff may not recover from Defendant in any sum or manner whatsoever.

FIFTH DEFENSE

Defendant asserts that the defenses of contributory and comparative negligence may bar Plaintiff from recovery or shall apply such that any recovery awarded her must be reduced in proportion to her negligence with respect to the purported accident at issue.

SIXTH DEFENSE

Defendant reserves the right to set forth further and/or additional defenses as may be revealed via discovery.

WHEREFORE, having fully responded to the averments in Plaintiff's *Complaint*, Defendant The Kroger Co. respectfully prays:

- (a) That judgment is rendered in favor of Kroger and against Plaintiff;
- (b) That Kroger be discharged with all costs cast against Plaintiff;
- (c) That this matter be tried by a jury of twelve persons regarding any issues not subject to summary adjudication; and
- (d) For such other and further relief as is just and proper.

Respectfully submitted, this the 28th day of August, 2023.

**GRAY, RUST, ST. AMAND,
MOFFETT & BRIESKE, L.L.P.**
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/s/ Jeffrey M. Wasick
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*Attorneys for Defendant The Kroger
Co.*

CERTIFICATE OF SERVICE AND OF COMPLIANCE WITH L.R. 5.1

This is to certify that on this date, the undersigned filed a true and correct copy of DEFENDANT THE KROGER CO.'S ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT with the Clerk of Court using the CM/ECF system and served all parties of record via electronic service through the CM/ECF system to:

Kristina Ducos, Esq.
THE DUCOS LAW FIRM, LLC
600 Peachtree St. NE, Suite 3710
Atlanta, Georgia 30308

Further, this is to certify that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.1. It is prepared in Times New Roman 14-point font.

Respectfully submitted, this the 28th day of August, 2023.

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